IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FOURTEENTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No. 26467 of 1998

Between:

The workmen of M/s.Calama

Process Pumps, Balanagar,

Hyderabad, rep. by

1. Bachu Kumar Singh
2. A. Satyanarayana
3. K. Narsappa
4. Suresh Kumar Roy
5. P. Balakrishna
6. K. Bhoopal Reddy
7. Ramakrishna Acharyulu
8. Joseph Chacko
9. Susheel Kumar Biswas
10. Kabender Kumar Biswas
11. Ashok Kumar
12. Prashant Tripathi
13. B. Laxman
14. T. Davidson
15. V.K.K. Gokhale

16. K. Rajesh

17. Lalender Kumar Singh

(All the above petitioners are workmen

under the 2nd respondent and their address

is C/o A.Satyanarayana, 11-12, Sikh Village,

Mudford, Secunderabad)

..... PETITIONER

AND

1. Industrial Tribunal-I, rep. by its Chairman,

   Chandra Vihar Building, 1st Floor,

   M.J. Road, Hyderabad.

2. The Management of Calama Process Pumps,

   C-2, Cooperative Industrial Estate,

   Balanagar, Hyderabad-500 037.

3. The Managing Director,

   Calama Process Pumps,

   7, Gaiwadi Industrial Estate,

   Goregaon(W), Mumbai-400 062. **.....RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to call for the records from the 1st respondent and issue an appropriate writ, order or direction, particularly one in the nature of Writ of Certiorari and quash the Award passed by the 1st respondent in I.D.No.138 of 1996, dated 17-1-1998, published on 12-2-1998 and grant all consequential benefits.

Counsel for the Petitioners: Mr.A.K.JAYAPRAKASH RAO

Counsel for Respondent No.1 : G.P. for Labour

Counsel for the Respondents 2&3: Mr.P.NAGESWAR SREE

The Court made the following :

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.26467 of 1998

O R D E R:

This writ petition is filed by the Workmen of M/s.Calama Process Pumps, Balanagar, Hyderabad being aggrieved by the Award passed by the Industrial Tribunal-I, Hyderabad in I.D.No.138 of 1996, dated 17-1-1998.

Petitioners herein raised a dispute before the Conciliation Officer. On failure of conciliation, the matter was referred to the Government. Government, in turn, referred the dispute under Section 10(1)(d) of the Industrial Disputes Act,1947 (for short 'the Act') to the Tribunal to resolve the following question:

> "Whether M/s.Calama Process Pumps, Balanagar, Hyderabad is part of Calama Process Industries Group, Bombay and its closure from 13-2-1996 is legal ?
>
> If not, to what relief the workers are entitled ?

Claim petition was filed by the petitioners before the Tribunal stating that the 17 workmen/petitioners were employees of M/s.Calama Process Pumps, which is an All-India Organization. It has manufacturing units at Hyderabad, Ahmadabad and Mumbai. There were about 25 workers in the Hyderabad unit since more than 20 years. Some of those employees had put in 7 to 10 years of service by the date of closure of the unit on 13-2-1996. All of a sudden, with a mala fide intention and without taking any prior permission of the Government as required under Chapter V-B of the Act, the unit was closed. Since there were more than 100 workers in all the three units put together, the management was required to pay terminal benefits as per Chapter V-B of the Act. The Conciliation Officer had suggested to pay three months wages plus difference of terminal benefits. Whereas, the management deposited some amount with the Conciliation Officer and asked the workmen to

collect the same from the Conciliation Officer. The closure was not genuine and it was with a *mala fide* intention to deprive the workmen of their employment.

The management had filed a counter affidavit before the Tribunal stating *inter alia* that there is no industrial dispute whatsoever and, therefore, the very reference made by the Government itself was beyond the scope and ambit of the Act. The unit at Hyderabad is an independent legal entity having its own identity. The respondent-firm is not dependent upon any other legal entity for its functioning. The balance sheet of the respondent-firm reflects the figures of Hyderabad factory only. The workmen were appointed by the Manager of Hyderabad unit and he paid the wages. There were 24 workmen on the rolls on the date of closure. The respondent-firm faced severe financial problems from inception due to adverse market conditions and recurring increase in the prices of raw materials as well as acute shortage of powers supply and market competition. The respondent suffered heavy financial loss. Efforts made by the respondent to improve the financial position of the company failed and, therefore, the firm was closed on 13-2-1996. The provisions of Chapter V-A of the Act are applicable to the respondent-industry. Respondent complied with the requirements of Section 25FFF of the Act by paying terminal benefits at the time of closure. The amounts were paid by cheque drawn on 13-2-1996. Cheques and terminal letters were sent by Registered Post. Respondent engaged 24 workers as evidenced by the returns submitted to the Employment Exchange and other statutory bodies for the quarters ending 30-9-1995 and 31-12-1995. Petitioners having received closure compensation, notice pay, gratuity, wages earned by the date of closure and earned leave encashment, cannot raise a dispute as to the closure of the firm. The respondent has no branches anywhere. Therefore, permission of the Government is not necessary for the closure of the factory, since the respondent employed less than 100 workmen.

Before the Tribunal, on behalf of workmen W.W.1 was examined and marked Exs.W1 to W11 and for the management M.Ws.1 and 2 were examined and marked Exs.M1 to M36. After considering the entire oral and documentary evidence, apart from the case law cited before it in detail, the Tribunal came to the conclusion that the petitioners were not entitled for the relief as prayed for and, therefore, declared as such. Aggrieved by the said Award, the present writ petition is filed.

Heard both sides.

I am of the opinion that the Tribunal has considered every aspect of the matter in detail and the Award passed by the Tribunal does not call for interference at the hands of this Court. The Tribunal categorically found that the petitioners have not elicited from the evidence of M.Ws.1 and 2 that if all the workmen in the three factories including the branches are taken together, there are more than 100 workmen. Even otherwise, the Tribunal found that all the three units of the factory are altogether different, though there are common partners in the business at Hyderabad and elsewhere. The balance sheet of the factory at Hyderabad is an independent one and it was never treated as part of any other unit elsewhere or those units were shown as part of the unit at Hyderabad. Even otherwise, it was not proved that the workers in all the three units put together were more than 100. Therefore, the question of obtaining valid permission from the Government before closure under Section 25-O of the Act does not arise. The Tribunal also relied upon various decisions of the apex Court, wherein it was held that the workmen recruited for a particular branch for whom they were employed, were not liable to be transferred from one branch to another. When there were different categories of workmen on different scales of wages at various branches, each of the branches of the company must be regarded as a separate 'industrial establishment' for the purpose of Section 25-C of the Act. In all such cases, therefore, the Court has to consider with care how far there is functional integrality meaning thereby such functional inter-dependence that one unit cannot exist conveniently and reasonably without the other and on the further question whether in matters of finance and employment, the employer has actually kept the units distinct or integrated.

The evidence let in before the Tribunal categorically shows that all the three units at Ahmadabad, Mumbai and Hyderabad were all independent units and had separate balance sheets and the employees are not transferable from one unit to another and the pay-scales adopted were also different. Once this is the situation, the contention that all the three units are to be treated as one industry and all the units put together had more than 100 workers and as such, the provisions of Chapter V-B of the Act are applicable to the respondent-firm has no substance. Therefore, the Award passed by the Tribunal cannot be faulted and the writ petition is devoid of merits and liable to be dismissed.

Accordingly, the writ petition is dismissed. No costs.

14-10-2004

prk

ASSISTANT REGISTRAR

/True copy/

SECTION OFFICER.

To

1. The Chairman, Industrial Tribunal-I, Chandra Vihar Building, I Floor, M.J.Road, Hyderabad.

2. 2 CD copies.

3. 2 CCs to G.P. for Labour, High Court Buildings, Hyderabad (OUT)